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July 11, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
TW-B204
445 Twelfth Street, S.W.
Washington., DC 20554

Re: Application by Verizon Pennsylvania, Inc., Verizon Long Distance, Verzion Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Special Services, Inc. for Authorization to Provide In-Region InterLATA Services in Pennsylvania, CC Docket No. 01-138

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's June 21, 2001 Public Notice Requesting Comments are an original, four paper copies, and a diskette copy of the Comments of Capsule Communications, Inc, Covista, Inc., and US LEC Corp.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,

Harisha J. Bastiampillai

Enclosures

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

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Dated: July 11, 2001

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EXHIBIT A – JUNE 13, 2001 MARYLAND PUBLIC SERVICE COMMISSION LETTER RULING

SUMMARY

It is rare, and perhaps unprecedented, that a Section 271 application comes to this Commission with such a divided and diluted "endorsement" from the state commission level. Two Commissioners of the Pennsylvania Public Utility Commission ("PA PUC") found that Verizon Pennsylvania's ("Verizon PA") application was not in full compliance with the requirements of Section 271.[1] Commissioner Brownell found that "Verizon must take further action to demonstrate that the local exchange and exchange access markets in Pennsylvania are fully and irreversibly open to competition."[2] Commissioner Fitzpatrick found that Verizon failed to comply with checklist items 2, 4, and 5 and noted that his fellow Commissioners were "overlooking certain problems."[3] Even the three Commissioners who voted to support Verizon's application imposed significant conditions that Verizon had to accede to prior to obtaining their endorsement.[4]

A review of Verizon's application to this Commission shows why the PA PUC was so ambivalent about the application. The application shows significant checklist non-compliance in the vital areas of provisioning of high capacity loop and transport facilities, operations support systems ("OSS") and reciprocal compensation. In regard to high-capacity loop and transport facilities, Verizon continues to demonstrate the poor provisioning of such facilities exhibited in its Massachusetts application. Verizon predictably attempts to invoke the same excuses it used in Massachusetts in an attempt to have its performance pass muster for this application. In

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1 PA PUC Docket No. M-00001435, Dissenting Statement of Commissioner Nora Mead Brownell at 1-2 (June 6, 2001) ("*Brownell Dissent*"); PA PUC Docket No. M-00001435, Dissenting Statement of Commissioner Terrance J. Fitzpatrick at 4 (June 6, 2001) ("*Fitzpatrick Dissent*").

2 *Brownell Dissent* at 1.

3 *Id.*

4 PA PUC Docket No. M-00001435, June 6, 2001 Secretarial Letter at 4.

Pennsylvania, Verizon, however, is missing far too many metrics and in a far too significant manner to excuse its non-compliance. The Commission in its Massachusetts 271 Order stated that it will actively monitor Verizon's performance in regard to high capacity facilities. The fact that Verizon's performance continues to be poor in another state coupled with the invocation of the same tired excuses mandates greater scrutiny of Verizon's performance in regard to this application. The Commission should determine why Verizon's fails to provision these vital facilities in a timely manner and why it continually claims that facilities are not available.

There are significant concerns about Verizon's operations support systems ("OSS") both in regard to their overall functionality and capacity and specific deficiencies evidenced in the various stages of the OSS process. One would have hoped that by now Verizon's OSS would be sufficiently mechanized. Verizon's competitors, however, have been mired in manual processesing of orders and paper bills. Verizon's flow-through rate, *i.e.*, its ability to electronically process orders, has been at drastically low levels since last year and has only begun to show some minimal improvement in the last couple of months. Thus, many CLEC orders are relegated to manual processing of orders filled with the delays, and potential for error, that accompanies such manual processing. CLECs have also been dealing with inaccurate orders which invariably will lead to trouble reports as CLEC customers find they did not get the service they requested.

For years, competitors have been asking Verizon in Pennsylvania to provide electronic billing, but instead they have been relegated to dealith mounds of paper bills filled with numerous errors. CLECs have also not been getting timely billing completion notifications from Verizon. Thus, CLECs are unable to begin billing the customer or addressing maintenance and repair issues. In some cases, Verizon also continues to bill the customer even after the customer is cutover to its new provider. Since OSS issues implicate the crucial first interaction stage between the CLEC and its new customer, and since the customer will not know, or care, who the ultimate cause of problems are, Verizon's failures in OSS significantly harm competitors.

Verizon has also been failing to comply with the requirements of Checklist 13. Verizon is not meeting its reciprocal compensation obligations under PA PUC-approved interconnection agreements. In one instance, Verizon unilaterally determined it will ignore the reciprocal compensation rate specified in the interconnection agreement with the CLEC and simply pay a lower rate that it had inserted in a state tariff. Verizon did not seek the consent of the CLEC to amend the agreement to apply this other rate or the approval of the PA PUC. This year, after the Commission issued its reciprocal compensation order, Verizon once again determined that it would unilaterally impose its interpretation of the ruling without following the procedures specified in the interconnection agreement and without seeking the approval of state commissions. The Commission has required that RBOCs, in order to satisfy Checklist Item 13, must follow requirements promulgated under state commission approved interconnection agreements. Therefore, this Commission should not countenance Verizon's blatant disregard of the language of interconnection agreements and state authority over review and enforcement of such agreements.

The significant reservations rightfully raised at the state commission level, coupled with poor performance evidenced in Verizon PA's performance data, counsel that this Commission should deny Verzion's application.

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Solutions, Verizon Global Networks, Inc., and	)	
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To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

JOINT COMMENTS OF CAPSULE COMMUNICATIONS, INC., COVISTA, INC., AND US LEC CORP.

Capsule Communications, Inc. ("Capsule"), Covista, Inc. ("Covista"), and US LEC Corp. ("US LEC") (collectively, "Joint Commenters") submit these comments concerning the above-captioned Application by Verizon Pennsylvania, Inc. ("Verizon PA"), Verizon Long Distance, Inc., Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. (collectively, "Verizon" or "Applicants") for Provision of In-Region, InterLATA Services in Pennsylvania filed June 21, 2001 ("Application").[5] For the reasons stated herein, the Federal Communications Commission ("Commission") should deny the Application because Verizon has failed to demonstrate that it has complied with the requirements of Competitive Checklist Items 2, 4, 5, and 13.

Capsule is a facilities-based provider of local and long distance, dedicated access, and DSL services to small and medium-sized business customers and residential customers.

[5] Comments Requested on the Application By Verizon Pennsylvania, Inc. For Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Pennsylvania, Public Notice, CC Docket No. 01-138, DA 01-1486 (rel. June 21, 2001).

Capsule has a switch located in Philadelphia, Pennsylvania. Covista is an integrated communications provider offering services to commercial and wholesale customers in the domestic and international markets. Covista has an extensive facilities-based network and offers traditional dedicated and switched voice services, high speed Internet access, and advanced data networking solutions. Covista is in the process of acquiring Capsule. US LEC is a facilities-based provider of local, long distance, data, Internet and enhanced services serving customers in the southeastern and Mid-Atlantic sections of the United States.

I. IN CONTRAVENTION OF CHECKLIST ITEMS 4 AND 5, VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO HIGH CAPACTIY LOOPS AND TRANSPORT

Verizon is required to provide CLECs DS-1 facilities for use as both high-capacity loop and transport facilities. In evaluating Verizon's performance for specific loop types such as DS-1 facilities, the Commission will look for patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete.[6]

DS-1 circuits can also be used to provide unbundled local transport. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[7] The Commission has required that BOCs provide both dedicated and shared transport

[6] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 122 (Apr. 16, 2001) ("*Verizon MA 271 Order*").

[7] 47 U.S.C. § 271(c)(2)(B)(v).

to requesting carriers.[8] This Commission has also required that the ILEC must provide all technically feasible capacity related transmission services including, DS-1 transport.[9]

In regard to evaluating a RBOC's performance in providing DS-1 facilities, the Commission will consider whether the RBOC is providing the facilities in a timely manner.[10] This application continues to underscore the difficulties CLECs have been experiencing in obtaining high capacity facilities from Verizon. In Massachusetts, the Commission recognized that there were "performance problems" in regard to high capacity loops, but it excused these disparities due to the small numbers of DS-1 loops requested.[11] The Commission noted, however, that it will be "actively monitoring Verizon's performance in this area."[12] The performance data indicates that Verizon is continuing to provide disparate service in regard to high capacity facilities, this time in Pennsylvania. In February, March, and April of this year, the average installation interval for DS-1 loops was 19.16 days as opposed to Verizon's retail performance, which was 15.61 days.[13] During the same period, Verizon was also out of parity

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8 *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, ¶ 201 (1998).

9 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, ¶ 308 (1999)("*UNE Remand Order*").

10 *Verizon MA 271 Order* at ¶¶ 156, 209.

11 *Verizon MA 271 Order* at ¶ 156, n. 495.

12 *Id.*

13 CC Docket No. 01-138, *Verizon Application,* Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at 142. ("*Lacouture/Ruesterholz Declaration*").

for the missed appointment metric for DS-1 loops.[14] Verizon reported similar results for its provisioning of interoffice facilities.[15]

In regard to missed appointments, Verizon argues that it is inappropriate to compare its wholesale performance to its retail performance since it claims that for wholesale orders it issues due dates within a few dates of the order regardless of whether it has the facilities or not, and that its performance is measured by whether it meets the due date.[16] But by excluding orders for which no facilites are available, Verizon performance is not being measured by whether it meets the due date. Thus, Verizon can simply issue a timely firm order confirmation for the order and provide a due date, knowing that it can subsequently claim that facilites were not available and excuse itself for missing the due date.

Pennsylvania PUC Commissioner Fitzpatrick noted that the data showed significant sub-standard performance with respect to loops and transport.[17] He noted his preference that this performance be more carefully reviewed prior to the Pennsylvania PUC endorsing the application.[18] His recommendation was not followed. Commissioner Brownell also found poor commercial performance on the part of Verizon in the provisioning of loop and transport facilities.[19] Instead with regard to both high-capacity loops and transport, Verizon attempts to define away the problem by seeking to exclude orders from the metrics where "facilities were

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14 *Id.* at ¶ 148.

15 *Id.* at ¶ 273.

16 *Id.* at ¶ 150.

17 PA PUC Docket No. M-00001435, Dissenting Statement of Commissioner Terrance J. Fitzpatrick at 4 (June 6, 2001) ("*Fitzpatrick Dissent*")

18 *Id.* at 5.

19 *See, Brownell Dissent* at 2.

not available."[20] In fact, Verizon goes as far as to recast its performance under such as a standard by excluding orders for which "facilities were not available."[21] Even when it excludes orders where facilities are not available, Verizon is still out of parity for the average completion intervals for DS-1 loops for the February-April period.[22] Verizon claims that the two extra days that it takes to provision the DS-1 loops for CLECs is not "competitively significant."[23] High capacity loops, however, are used in part to service high-volume customers for whom any delay in obtaining service will significantly impact their businesses. CLECs cannot effectively compete for these customers if they are not able to procure these high-capacity loops in a timely manner. This delay will be competitively significant, and the harm will only be exacerbated by the "facilities not available" problem.

The "lack of facility" problem is particularly acute because these are orders in which Verizon assigned a loop and gave a firm order commitment date for the order. Thus, both the CLEC and its customer are expecting the order to be delivered on time and are gravely disadvantaged when the order is not delivered on schedule. CLECs cannot afford these substantial delays in provisioning of facilities. The lack of facilities not only impacts a CLEC's ability to service its customers, but also to generate new customers. It also restricts the type of services a CLEC can offer to a potential customer.

It is also unclear why the "facilities not available" situation is so prevalent for wholesale orders when Verizon's, by its own admission, has retail volumes that are "so much larger than

20 *Lacouture/Ruesterholz Declaration* at ¶¶ 143, 147; ¶¶ 274, 278

21 *Id.* at ¶¶ 144, 149, 274.

22 *Lacouture/Ruesterholz Declaration* at ¶ 144.

23 *Id.*

wholesale volumes."[24] If Verizon's retail provisioning is flourishing, it should explain why its wholesale provisioning is so meager and fraught with lack of facility issues. Of the 111 orders for DS-1 facilities Verizon processed during February – April 2001, Verizon designated 28 as orders where "facilities were not available."[25] That represents over 25% of DS-1 orders.

Predictably, Verizon attempts to invoke the small number of orders for DS-1 facilities as justification once again for why this Commission should ignore the significant performance problems.[26] Expressing the competitive significance of DS-1 loops based on the relative percentage of DS-1 loops to unbundled loops provisioned is misleading and inappropriate. It is generally economically viable for a CLEC to use a DS-1 facility for a customer that requires multiple lines.[27] Thus, it is inaccurate for Verizon to state that DS-1 loops only represent 0.13% of all unbundled loops provisioned. If we take the suggestion that a DS-1 facility is the equivalent of 20 loops, then the percentage is more accurately nearly 3% of all unbundled loops provisioned. Plus there are often high non-recurring charges to establish high-capacity arrangements so CLECs will have a lot invested in such facilities,[28] and provisioning delays for such facilities will have significant competitive impact for such carriers.

The Commission, in accord with its stated intent to actively monitor Verizon's performance in this area, should look beyond Verizon's excuses and determine if the provisioning problems are forcing CLECs to look to other alternatives for such facilities. Otherwise, Verizon has a perverse incentive to continue to maintain substandard performance.

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24 *Id.* at ¶ 147.

25 *Lacouture/Ruesterholz Declaration*, Attachment 27, p. 1.

26 *Lacouture/Ruesterholz Declaration* at ¶ 140.

27 It has been suggested that a DS-1 facility is viable for customers with 20 or more lines. CC Docket No. 96-98, *Ex Parte* Presentation of The PACE Coalition at 2 (July 11, 2000).

The situation in regard to UNE DS-1 provisioning mirrors the problems CLECs have been experiencing in regard to Verizon's provisioning of special access services. US LEC, in some instances, purchases DS-1 facilities for special access services from Verizon. Verizon is supposed to provide a firm order confirmation within five days; instead, if takes on average nine days for US LEC to receive the confirmation. The facilities are to be delivered within 11 days, but it takes Verizon on 18 days to deliver the facilities. Verizon's region-wide problems in providing special access services have been cause for great concern. For instance, in New York and Massachusetts proceedings have been initiated to address Verizon's continual failure to meet installation intervals for special access facilities.[29] The provisioning of special access services has also been plagued by "lack of facility" issues.[30] While special access facilities are not UNEs, they are largely interchangeable with UNEs because they use the same network facilities.[31] Thus, problems in provisioning special access services will also be indicative of problems in provisioning the corresponding UNEs.[32] The fact that Verizon is experiencing significant delays in provisioning special access facilities provides a further indication of its problems in regard to providing UNE DS-1 facilities.

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28 *Id.*

29 *Re Verizon New York Inc.*, New York Public Service Commission Case Nos. 00-C-2051 and 92-C-0665, Order Instituting Proceeding at 1 (November 24, 2000) ("*NY Special Access Order*"); *Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc. d/b/a Verizon Massachusetts' provision of Special Access Services,* Massachusetts Department of Telecommunications and Energy Docket No. 01-34, Vote and Order to Open Investigation at 2 (March 14, 2001) ("*MA Special Access Order*").

30 CC Docket 01-9, Comments of Global Crossing North America, Inc. (Feb. 6, 2001) ("*Global Crossing Comments*").

31 *Id.* at 2.

32 *Id.*

II. VERIZON FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS IN VIOLATION OF CHECKLIST ITEM 2

A. Legal Standard

Checklist Item 2 requires that a BOC provide non-discriminatory access to network elements.[33] In analyzing whether a BOC provides non-discriminatory access to its operations support systems ("OSS") for Section 271 purposes, the Commission has adopted a two-step approach. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[34] The Commission has traditionally focused on the functionality and capacity of the BOC's OSS in its analysis of this step.

In the second step, the Commission determines if "the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[35] It looks at performance measures and other evidence of commercial readiness. The Commission evaluates performance in the five stages of OSS – pre-ordering, ordering, provisioning, maintenance/repair and billing. With respect to the instant Application, both the general functionality/capability of Verizon PA's OSS and its performance at the various stages of the OSS process demonstrate that Verizon is not satisfying the requirements of the competitive checklist in regard to OSS.

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[33] 47 U.S.C. § 271(c)(2)(B)(ii).

[34] *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶ 96 (June 30, 2000) ("*SBC TX 271 Order*").

[35] *Id.*

B. Functionality and Capacity of Verizon PA OSS System

The Commission requires a 271 applicant to demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.[36] There are fundamental concerns about the functionality and capacity of Verizon PA's OSS systems. In June 2000, the Pennsylvania Public Utilities Commission ordered Bell Atlantic-PA to "analyze, reveal and fix the root cause of problems identified by KPMG during the Pennsylvania OSS tests."[37] The PA PUC did this because of "uncertainty as to whether the OSS of BA-PA is capable of handling increased volumes when CLECs begin mass-marketing of their local services."[38]

There are serious questions as to the functionality and capacity of Verizon PA's OSS as demonstrated below. The fact that many of these issues are still festering suggest that the root cause of these problems has not been fixed. In particular, two issues give cause for great concern as to whether Verizon PA's OSS is capable of handling increased volumes. First, Verizon PA's flow-through rate has hovered in the 40% range from September 2000 to January 2001.[39] The flow-through rate, as we shall show below, measures how many orders are processed electronically as opposed to manually. As this Commission has indicated, a poor flow-through rate can often be an indicator of "an inability to process competing carriers' orders at reasonably

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[36] *Id.* at ¶ 97.

[37] *OSS Test Project,* Pennsylvania Public Utility Commission Docket No. M-00991228, Letter from Secretary to All Interested Parties (June 27, 2000).

[38] *Operations Support Systems of Bell Atlantic-PA, Inc.*, Motion of Commissioner Terrance J. Fitzpatrick at 2 (June 8, 2000).

[39] PA PUC Docket No. M-00001435, AT&T Communications of Pennsylvania, Inc.'s Main Brief at 24, n. 11 (April 18, 2001) ("*AT&T Brief*").

foreseeable commercial volumes in a nondiscriminatory manner."[40] As AT&T noted, "Verizon's failure to sufficiently automate its systems and to continuously show poor flow-through results also points out that Verizon has not shown that its systems are capable of handling both current demand and projected demand."[41]

Second, Verizon's inability to provide electronic bills, also documented below, despite CLECs requests for such bills for nearly two years exacerbates concerns about how sufficiently automated Verizon's OSS is, and whether it can handle commercial levels of volume. As will be shown below, the billing problems represented a significant factor in the recommendation of two Commissioners that the Pennyslvania PUC reject Verizon's application. The problems with billing raised significant questions about the manual nature of Verizon's OSS as well as Verizon's delays in automating its processes. Verizon PA's application, as it now stands, does not demonstrate that its OSS is capable of handling current and projected demand. Verizon PA should be required to demonstrate a period of sustained compliance with the applicable performance standards in regard to OSS prior to its Application being approved.

In the next section we will focus on specific deficiencies in the various stages of Verizon PA's OSS.

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[40] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 77 (Apr. 16, 2001) ("*Verizon MA 271 Order*")

[41] *AT&T Brief* at 25.

C. The Stages of Verizon PA OSS

1. Pre-Ordering

The pre-ordering stage encompasses those activities that a carrier undertakes to gather and verify the information needed to place an ILEC service order to accommodate a customer's requirements. Before the CLEC can even begin to place the order, the CLEC must determine what the ILEC is able to provide. The CLEC operates at an information disadvantage vis-a-vis the ILEC, whose database already indicates what services can be provided to a particular end-user, and the CLEC must overcome this disadvantage quickly to retain the customer. As the Commission has noted:

> [g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.[42]

The general standard that the Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations is that the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."[43] This is appropriate because most pre-ordering functions that support service through UNEs are analogous to the pre-ordering of a BOC's retail services. For those pre-ordering functions that lack a retail analogue, the BOC

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[42] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket 99-295, Memorandum Opinion and Order at ¶ 129 (December 22, 1999)("*BANY 271 Order*").

[43] *Id*

"must provide access that affords an efficient competitor a meaningful opportunity to compete."[44]

The Commission has previously emphasized that "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."[45] It is not enough. however, that the CLEC have access to the same information as does the BOC. Rather the CLEC must also have the ability to retrieve this information and process the information on terms and conditions on a par with those applied to the ILEC's retail services.

CLECs have been experiencing problems with regard to accessing Verizon's pre-ordering interfaces. WorldCom noted that there were 58 hours of scheduled outages and 6 hours of unscheduled outages for Pennsylvania in the month of February 2001 for the Web-GUI interface, which is used by numerous CLECs for pre-ordering functions.[46] WorldCom calculated that the GUI was available only 84.54% during prime time hours, which is far less than the 99.5% availability rate this Commission has previously found to be appropriate and reasonable.[47] According to WorldCom, Verizon failed to meet PO-2-02, OSS Interface Availability, for both January and February of this year. Verizon's reports shows that it missed the metric in March as well.[48]

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[44] *Id.*

[45] *Id.*

[46] Docket No. M-00001435, Redacted MCI WorldCom Filing on February 2001 Commerical Availability Period Data at 2 (April 12, 2001) ("*WorldCom Commercial Availability Finding*").

[47] *WorldCom Commercial Availability Filing* at 1-2.

[48] CC Docket No. 01-138, *Verizon Application*, Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. Devito, Attachment 1, p. 17, PO-2-02.

In addition to shutdowns, the pre-ordering systems also experience numerous slowdowns. AT&T has experienced problems with slow Web GUI OSS response times and constant Web GUI outages.[49] In January 2001, AT&T received at least 13 notices concerning Web GUI access problems.[50] AT&T noted that these problems caused a "mounting backlog of 9,500 orders that AT&T was unable to process."[51] Unfortunately, the OSS Interface Availability metric does not capture slow Web GUI response times.[52] AT&T noted that the January 2001 C2C CLEC aggregate report did show that Verizon failed to meet the metric for responding to pre-order queries for customer service records.[53] XO Communications also observed that the Web GUI is often down altogether, without warning, or is slow to respond.[54]

CLECs use these interfaces to perform pre-ordering, ordering and maintenance/repair functions. Nearly 100 CLECs in Pennsylvania use the Web GUI interface.[55] Thus, these periods of inaccessibility render CLECs incapable of processing orders and repair requests. This will obviously try the patience of their customers at both ends of the process, particularly those customers waiting for repairs. It also greatly increases the work that will have to be performed by a CLEC's employees as orders will require manual processing which increases the time, expense, and possibility of error. Only CLECs use the GUI, so contrary to Verizon's assertions,

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[49] Docket No. M-00001435, Comments of AT&T Communications of Pennsylvania, Inc. Regarding January 2001 Commercial Availability Report of Verizon Pennsylvania, Inc. at 6 (March 16, 2001) ("*AT&T Commercial Availability Filing*").

[50] *Id.*

[51] CC Docket No. 01-138, Consultative Report of the Pennsylvania Public Utility Commission at 80 (June 25, 2001) ("*Consultative Report*"). *citing*, *AT&T Revised OSS Declaration* at ¶ 33.

[52] *AT&T Commercial Availability Filing* at 6.

[53] *Id.*

[54] *Consultative Report* at 81, *citing*, *2/12/01 XO Woods Declaration* at ¶ 4.

[55] CC Docket No. 01-138, *Verizon Application*, Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster at ¶ 28.

the outages do not impact CLECs and Verizon equally. CLECs, who already operate at an informational disadvantage, are handicapped even more by this poor interface accessibility.

2. Ordering/Provisioning

This Commission has previously focused on "flow-through" rates as an indica of parity in the ordering stage.[56] "Flow-through" refers to orders that are transmitted electronically through the gateway and accepted into the ILEC's back office ordering systems without manual intervention. The flow-through rate often serves as a yardstick to evaluate whether an incumbent LEC's OSS is capable of handling reasonably foreseeable commercial volumes of orders.[57] In addition, this Commission has focused on an ILEC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems."[58]

AT&T observed that Verizon reported a flow-through rate of only 44% for January 2001 which "is clearly insufficient to support commercial volumes of transactions and requires far too much manual work."[59] In April, the flow-through rate for simple UNE orders had risen to only 55%.[60] In contrast, Verizon's flow through rate in New York is 80%.[61] In Texas, SWBT's flow through rate ranged from 84 to 97%.[62] This data shows that Verizon will be manually processing a large amount of orders that will lead to human error and delay. The situation will only be

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[56] *BANY 271* Order at ¶ 160, fn. 488, ¶ 162, fn. 496.

[57] *Id.* at ¶ 162.

[58] *Id.* at ¶ 163.

[59] *AT&T Commercial Availability Filing* at 2.

[60] *Guerard/Canny/DeVito Declaration*, Attachment 1, p. 41, Metric OR 5-02.

[61] *AT&T Commercial Availability Filing* at 2.

[62] *Consultative Report* at 86, *citing*, *2/12/01 MCIW Joint Declaration* at ¶ 53.

exacerbated when commercial volumes of orders increase. If simple orders that should flow through require manual processing, then the delays will only continue to build. The poor flow-through rate problem is exacerbated by subsequent delays throughout the process. For instance, Verizon failed to return timely firm order confirmations on non-flow-through orders in January 2001.[63]

There have also been problems in regard to the accuracy of orders. In January 2001, XO noted that Verizon provided an order accuracy rate of only 87.11%, as opposed to the required performance standard of 95%.[64] Verizon also substantially missed this metric in February, March, and April 2001.[65] XO noted that for metric OR-6-03, Verizon, instead of reviewing all local service requests to compute its results, used a sampling methodology. XO examined all its local service requests for January 2001 and determined that 59% of the orders were incomplete due to Verizon error.[66] As XO astutely noted, inaccurate orders often lead to trouble reports as customers do not receive the services they requested. The substantial number of trouble reports reported for XO orders corroborated that Verizon was not executing XO orders properly.[67] AT&T also noted Verizon's poor performance in regard to order accuracy and stated that 25% of its orders that do not flow-through are misprovisioned.[68]

In addition, CLECs have been experiencing difficulties in ascertaining the status of their orders. There are three types of notifications that a CLEC receives with regard to an order –

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[63] *AT&T Commercial Availability Filing* at 6.

[64] PA PUC Docket No. M-00001435, Comments of XO Pennsylvania, Inc. on Verizon Pennsylvania, Inc.'s January 2001 Carrier-to-Carrier Reports at 3 (March 16, 2001) ("*XO Commercial Availability Filing*").

[65] *Guerard/Canny/DeVito Declaration*, Attachment 1, pages 9, 25, 41, OR-6-02.

[66] *XO Commercial Availability Filing* at 3.

[67] *Id.*

[68] *AT&T Commercial Availability Filing* at 7.

acknowledgments, confirmation, and rejects. Acknowledgments state that the order has been received; confirmations tell the CLEC that the order will be performed on a specific date; and rejects notify the CLEC that the order cannot be processed and gives the reason. As noted above, CLECs have been experiencing problems in obtaining timely firm order confirmations. WorldCom expressed concern over the fact that 70% of its rejects were processed manually. These rejects are difficult for WorldCom to process as they do not provide consistent reasons for the reject, thus, it takes WorldCom more time to figure out the reason for the reject and correct it.[69]

3. Billing

Billing is a particularly important area for CLECs. Customers demand the utmost in accuracy and timeliness in regard to their bills, particularly if they have just migrated from a long-term association with an ILEC. The two primary aspects of the billing function are the daily usage reports (daily usage feed or "DUF") that provide CLECs the information to bill their customers, and the monthly bills that detail what the CLEC owes the ILEC. CLECs have been experiencing significant problems in regard to both the monthly bills and DUFs. In regard to the monthly bills, for nearly two years CLECs have been requesting that bills be submitted in an electronic, mechanized format. The format is called Billing Output Specifications/Bill Data Tape.[70] Verizon only began providing these bills in an electronic format in November 2000, but the bills are often "late, inaccurate, contain numerous formatting errors" and require the CLEC to enter manually the incorrectly formatted data into its systems.[71]

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[69] *WorldCom Commercial Availability Filing* at 2.

[70] *Consultative Report* at 99.

[71] *Consultative Report* at 100, *citing, 2/12/01 MCI Comments* at 44; *4/18/01 MCIW Joint Declaration* at ¶ 36.

Given Verizon's failure to provide a "usable and accurate electronic bill," AT&T continues to receive only paper bills.[72] The use of paper bills has required carriers to review bills with each bill containing paper that can be stacked up to three feet high.[73] WorldCom said it gets up to 125 boxes of paper bills a month. Z-tel stated it "must spend hours pouring over tariffs, contracts, UNE-P rate sheets, and bill samples to analyze its bills."[74] Z-tel noted that because it takes so long for it to "audit" the bills, Z-tel cannot timely report the inaccuracies for inclusion in the applicable metric.[75] Z-tel also observed that during the period May to December 2000, Verizon's bills to Z-tel on average contained a margin of error of over 20%.[76] Other CLECs have noted similar errors. For instance, John Curry of Curry Communications ("Curry") testified as to improper inclusion of taxes and directory advertising charges, errors with billing adjustments and mysterious transfer charges. Many of the errors replicated previous errors which suggests there is no improvement on the issues by Verizon.[77] MetTel noted that it has repeatedly requested the BOS/BDT tape cartridge, but has had to rely on the paper bills instead which "cannot be reconciled in a cost efficient or commercially reasonable manner."[78]

In regard to the DUF, the tapes often contain inaccurate information such as information for customers that are not customers of the particular CLEC.[79] Since Verizon's paper bills do not itemize products and services, Curry uses the DUF to prepare end-user bills. However, Verizon does not deliver the DUF in a timely manner to Curry. Thus, the combination of the

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72 *Consultative Report* at 99, *citing, AT&T OSS Declaration* at ¶ 83.

73 *Consultative Report* at 100, *citing, AT&T OSS Declaration* at ¶ 83.

74 *Consultative Report* at 100, *citing, 2/12/01 Z-tel Comments* at 4.

75 *Consultative Report* at 101, *citing, 3/7/01 Transcript* at 137-139.

76 *Consultative Report* at 101, *citing, 2/12/01 Z-tel Comments* at 3.

77 *Consultative Report* at 101 *citing 3/15/01 Transcript* at 165, 174, 177.

78 *Consultative Report* at 102, *citing, 2/12/01 MetTel Comments* at 4.

79 *Consultative Report* at 101, *citing, AT&T OSS Declaration* at ¶ 86; *4/18/01 AT&T Comments* at 37.

incompleteness of the paper bills with the untimely DUF renders a situation where Curry's payments to Verizon are due before Curry can bill its end users for the service.[80]

CLECs have also not been receiving timely billing completion notices ("BCN"). A BCN is the final confirmation that the order has completed by Verizon.[81] As this Commission has noted:

> An order completion notice informs a competing carrier that Bell Atlantic completed the installation of the service requested by the particular order, which provides notice to the carrier that it has responsibility for the customer's care and may begin billing the customer for service. Until the competing carrier receives a completion notice, the carrier does not know that the customer is in service, and cannot begin billing the customer for service or addressing any maintenance problems experienced by the customer. Thus, untimely receipt of order completion notices directly impacts a competing carrier's ability to serve its customers at the same level of quality that Bell Atlantic provides to its retail customers. Accordingly, the Commission has instructed a section 271 applicant to demonstrate that it provides competing carriers with order completion notices in a timely and accurate manner.[82]

AT&T reported that it failed to receive 25% of its BCNs on time in January 2001, and 35% in February 2001.[83] WorldCom reported that it had submitted trouble tickets for missing BCNs on 18% of the PONs it has transmitted since the time it launched service in Pennsylvania.[84] Some BCNs were as much as 100 days late.[85] The problem has lingered because in Pennsylvania, unlike in New York, there is no metric to measure missing BCNs.[86]

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[80] *Consultative Report* at 101 *citing 3/15/01 Transcript* at 151-156.

[81] *BANY 271 Order* at ¶ 93.

[82] *BANY 271 Order* at ¶ 187.

[83] *AT&T Brief* at 28-29.

[84] PA PUC Docket No. M-00001435, Joint Reply Declaration of Sherry Lichtenberg and Mindy Chapman at ¶ 5 (April 18, 2001).

[85] *Id.*

[86] *AT&T Brief* at 30.

Verizon admitted that if the PA data was subjected to the New York performance metric for BCNs, Verizon would have failed the metric for January, February and March of this year.[87]

In addition, US LEC experiences a long-standing problem throughout the Verizon region whereby Verizon continues to bill a customer for services even after that customer has been cutover from Verizon to US LEC. The Commission has held that "evidence of a double billing problem demonstrates that a BOC is not providing nondiscriminatory access to its billing functions."[88] Indeed, it is hard to imagine a cause of greater frustration for a customer than being billed twice by different carriers. For some customers, this could serve as a disincentive to change carriers.

These problems are eerily reminiscent of the OSS problems in New York early last year. There the Commission found:

> Evidence submitted by Bell Atlantic in this investigation suggests that Bell Atlantic's performance in providing order acknowledgments, confirmation and rejection notices, and order completion notices for UNE-Platform local service orders deteriorated following Bell Atlantic's entry into the New York long distance market. Data submitted by Bell Atlantic indicates that the problem appears most acute for January and February of this year. Specifically, Bell Atlantic indicates that it received trouble tickets from competing carriers in November 1999 regarding 33,000 orders; 60,000 in December 1999, and more than 86,000 in January 2000. For the first eleven days of February 2000, Bell Atlantic reports receiving trouble tickets regarding another 48,000.[89]

Based on this woeful OSS performance, Bell Atlantic was required to make a voluntary contribution of $3,000,000 to the U.S. Treasury and the NY PSC had ordered to Bell Atlantic to make $10 million in rebates to competitors because of electronic ordering problems

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[87] PA PUC Docket No. M-00001435, Dissenting Statement of Commissioner Terrance J. Fitzpatrick at 4 (June 6, 2001) ("*Fitzpatrick Dissent*")

[88] *BANY 271 Order* at ¶ 228.

[89] *In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to provide In-Region, InterLATA Service in the State of New York*, Order, FCC 00-92, 15 FCC Rcd. 5413 at ¶ 7 (March 9, 2000).

documented.[90] As Commissioner Fitzpatrick astutely noted, "the New York experience of backsliding with missing notifiers puts this Commission on notice that missing notifiers can be so problematic as to actually halt competitive development within a state."[91] The potential for such a situation will clearly exist in Pennsylania as well.

Inaccurate bills are a sure-fire way for CLECs to lose customers, and even if the CLEC manages to keep the customer, it will have to waste precious time and resources addressing and fixing errors in bills. CLECs are forced to rely on the ILEC to provide accurate bills, and Verizon has not been providing accurate bills.

The situation is compounded by the fact that Verizon only in April 2001 started reporting certain metrics pertaining to billing, such as BI-6-02, BI-7-02, BI-8-02. Prior to this time such metrics were "under review."[92] These metrics are only now being applied to the electronic bills.[93] As WorldCom noted, this is especially problematic given Verizon's problems in the billing area. For the metrics that Verizon did report, WorldCom challenged some of the findings. For instance, while Verizon claimed it was producing 100% of bills on time for January and February, WorldCom said its data showed only its bills only 50% on time for January and 71% on time for February.[94] WorldCom also noted that its data suggests that Verizon's claim of 100% accuracy on the DUF is overstated as well.[95] In addition, given the prevalence of the voluminous paper bills, some of the metrics do not accurately capture inaccuracies. For instance, if errors are not pointed out in 30 days they are excluded. Given the problems with auditing the

[90] Edie Herman, *FCC Decides BA Has Satisfied OSS Requirements in N.Y. State*, Communications Daily, Vol. 20, No. 120, June 21. 2000 at p. 2.

[91] *Fitzpatrick Dissent* at 3.

[92] *WorldCom Commercial Availability Filing* at 5.

[93] PA PUC Docket No. M-00001435, June 6, 2001 Secretarial Letter at 4.

[94] *WorldCom Commercial Availability Filing* at 5.

[95] *Id.*

paper bills described above, many CLECs are unable to report errors in that time period. Thus, this makes Verizon's performance appear "stellar" when it is far from that.[96]

The problems with Verizon's billing are so significant that they played a large part in two of the PA PUC Commissioners voting to reject Verizon's application.[97] Commissioner Fitzpatrick noted that despite two years of work, "Verizon has yet to provide CLECs with an electronic bill which is sufficiently reliable."[98] He also noted how "impossible" it is for CLECs to check the accuracy of boxes of paper bills and that it was "ironic that they are forced to endure such a procedure in this high-tech industry."[99] Commissioner Fitzpatrick noted that the "e-billing system is unreliable" and there are still numerous open issues and systems changes to be made.[100] It was his understanding per Staff's communications with the FCC that in all states where previous section 271 applications were granted, an operational electronic billing system was in place.[101] Commissioner Fitzpatrick urged the PA PUC not to rely on Verizon's promises of future performance, but to require that Verizon PA first implement the scheduled fixes and then run the system through two billing cycles before it is found to be in compliance with this checklist item.[102]

Commissioner Brownell urged the same approach, stating that "without confidence that the billing systems are absolutely able to deliver adequate services and billing support to customers, I cannot see how the market can work."[103] The remaining Commissioners clearly had reservations about the billing as they attached conditions to their recommended approval of

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96 *Id.*

97 PA PUC Docket No. M-00001435, Dissenting Statement of Commissioner Nora Mead Brownell at 1-2 (June 6, 2001) ("*Brownell Dissent*"); *Fitzpatrick Dissent* at 1-4.

98 *Fitzpatrick Dissent* at 2.

99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.* at 3.

103 *Brownell Dissent* at 1.

Verizon's application.[104] Verizon was required to subject itself to greater remedies in regard to billing problems "to incent timely and effective implementation" of electronic billing.[105] The PA PUC paradoxically noted the "importance of accurate electronic billing for a finding of full compliance" with checklist obligations, and that Verizon's system fixes would not be completed until June 16, 2001, and that "a manual review process for a minimum of three (3) bill cycles" is needed to "ensure that its [Verizon's] processes have captured and corrected all issues."[106] Despite these concerns, the three remaining Commissioners decided to support the application rather than heed the counsel of their co-Commissioners to rely on actual performance as opposed to promises of future performance.

This Commission has declined to rely on promises of future performance in connection with the Section 271 process. As the Commission has held:

> the Commission has found that a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior.[107]

It is plain that Verizon has not met the checklist requirements with regard to billing and that Verizon's deficiencies in this area have tremendously impacted CLECs. This is not a recent problem, but rather one that has been going for at least two years. There is no basis to rely on promises of future performance; instead, Verizon should be required to demonstrate actual compliance before receiving Section 271 authority. When one considers Verizon PA's billing

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[104] PA PUC Docket No. M-00001435, June 6, 2001 Secretarial Letter at 4.

[105] *Id.*

[106] *Id.*

[107] *SBC TX 271 Order* at ¶ 38.

problems in concert with its other OSS problems, the conclusion is inescapable that Verizon has failed to demonstrate compliance with Checklist Item 2.

III. VERIZON DOES NOT COMPLY WITH CHECKLIST ITEM 13

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[108] The Commission has noted that in regard to reciprocal compensation requirements under Checklist Item 13, a BOC is required to follow "states' interpretations and requirements promulgated under their interpretation of interconnection agreements, including states' requirements concerning ISP-bound traffic."[109]

The recent reevaluation by the FCC of the proper treatment of intercarrier compensation of telecommunications traffic delivered to ISPs does nothing to alter the tenor of this Commission's rulings with respect to a BOC's reciprocal compensation obligations in regard to existing interconnection agreements.[110] The FCC explicitly stated that its determination does not "alter existing contractual obligations," and "does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here."[111]

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108 47 U.S.C. § 271(c)(2)(B)(xiii).

109 *Verizon MA 271 Order* at ¶ 215.

110 *See In the matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (Released April 18, 2001) (the "*FCC Reciprocal Compensation Order*").

111 *Id.* at ¶ 82.

Verizon is not meeting its reciprocal compensation obligations under PA PUC-approved interconnection agreements. In July 1999, US LEC and Verizon PA (then Bell Atlantic-Pennsylvania, Inc.) executed an interconnection agreement whereby US LEC exercised its right under Section 252(i) of the 1996 Act to opt into the Bell Atlantic-Pennsylvania, Inc./MCImetro Access Transmission Services, Inc.[112] The US LEC/Bell Atlantic PA agreement was approved by the PA PUC on January 27, 2000.[113] The BA-PA/MCImetro agreement specified a reciprocal compensation rate.[114] Instead of paying this rate for the termination of local calls, Verizon unilaterally paid a lower rate it had tariffed in its state tariff. Verizon did not seek US LEC's consent to alter the express language of the agreement and did not seek PA PUC approval for this action.[115] This was a direct circumvention of the language of the agreement, and the order of the PA PUC approving the agreement. This also represents an unequivocal violation of the requirements of Checklist 13.

Morevover, once again this year, Verizon is seeking to rewrite its reciprocal compensation obligations under its exsiting interconnection agreements. Despite this Commission's clear language in its recent reciprocal compensation order on the obligations of

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112 A copy of the Bell Atlantic/MCImetro Agreement is found in Appendix C to Verizon's Application at Volume 3a-3b, Tab D.

113 *Joint Petition of Bell Atlantic-Pennsylvania, Inc. and US LEC of Pennsylvania, Inc. for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996*, PA PUC Docket No. A-310814F0002, Opinion and Order (2000).

114 *Id.*

115 This is not the only instance of Verizon attempting to circumvent the requirements of Section 252(i) and state review of interconnection agreements. US LEC attempted in March of this year to opt into Verizon's February 2, 2001 interconnection agreement with Focal Communications. Verizon claimed that this agreement was terminated and not available for adoption, yet there was nothing on record with the PA PUC evidencing that the agreement was terminated such that it would preclude the ability of other CLECs to opt into such an agreement. US LEC had to file a complaint seeking expedited relief with the PA PUC to seek to opt into the agreement. The parties have resolved the issue such that US LEC can opt into the agreement, but US LEC was forced to expend considerable time and resources to force Verizon to accede to its obligations under Section 252(i) of the Act.

BOCs in regard to pre-existing reciprocal compensation obligations, Verizon is attempting to unilaterally impose its own interpretation of this Commission's ruling. Verizon has stated that it would refuse to pay invoiced amounts which exceed what would be due under Verizon's interpretation of the Order.[116] Verizon also stated that it did not need to invoke change of law provisions to amend existing interconnection agreements to implement the FCC's ruling. Verizon claimed that the Commission had preempted the State commissions on issues of compensation mechanisms and rates for ISP-bound traffic, and, thus, that the Maryland Commission lacked authority "either to revise its previous reciprocal compensation decision or to approve or deny amendments concerning Internet traffic."[117]

In the proper exercise of its authority, the Maryland Commission repudiated Verizon's view, finding that the Commission's Order was not "self-executing" and concluding that the interim compensation regime could only be implemented by invoking change-of-law provisions.[118] Verizon was directed to negotiate amendments to existing interconnection agreements,[119] and was also precluded from withholding reciprocal compensation payments until the amendments to the agreements are approved by the Maryland Commission.[120]

116 Maryland Public Service Commission, Letter from Executive Secretary to Counsel for CoreCommunications, Inc. and Verizon Maryland Inc. at 2 (June 13, 2001). A copy of the letter is attached hereto as Exhibit A.

117 *Id.*

118 *Id.* at 3.

119 Such an amendment would involve more than a simple ministerial act. The parties need to address, among other issues, the effective date of the amendment, and the actual payment structure -- which will differ depending on whether a CLEC accepts or declines Verizon's offer to exchange all traffic at the same rate. The amendment will also need to address the parties payment obligations in the event the Commission's order is reversed, vacated, or set aside on appeal.

120 *Id.*

Separately, in the Pennsylvania PUC proceeding addressing its Section 271 application, Verizon intimated that it planned to follow the same approach, *i.e.*, to act unilaterally to effect changes in reciprocal compensation arrangements.[121] The PA PUC deemed that such a practice would be irrelevant in regard to Checklist Item 13.[122] The PA PUC, however, clearly failed to consider this Commission's requirement that a carrier must follow "states' intepretations and requirements promulgated under their interpretation of interconnection agreements, including states' requirements concerning ISP-bound traffic" to satisfy Checklist Item 13.[123] The PA PUC has previously held that "calls to local ISPs shall be considered local and that reciprocal compensation shall be applied to all ISP traffic for all future interconnection agreements filed with the [PA PUC]."[124] Thus, Verizon would be bound to pay reciprocal compensation at the rates established by the PA PUC pending renegotiation of an alternative payment arrangement and subsequent PA PUC approval of that agreement.

In Massachusetts, for example, the Commission required a showing that Verizon is "providing reciprocal compensation under the obligations in its Department [MA DTE]-approved interconnection agreements and tariffs, as well as relevant Department Orders" to find compliance with Checklist Item 13.[125] Verizon's policy contravenes its obligations under existing interconnection agreements and PA PUC Orders, and thus violates Checklist Item 13. Verizon's policy circumvents the language of existing interconnection agreements, and states'

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121 *Consultative Report* at 232.

122 *Id.* at 233, n. 605.

123 *Verizon MA 271 Order* at ¶ 215.

124 *Consultative Report* at 231.

125 *Verizon MA 271 Order* at ¶ 216.

interpretations thereof. It also undermines state authority to review and approve amendments to agreements.

Accordingly, the Commission should deny Verizon's application for failure to comply with Checklist Item 13.

IV. CONCLUSION

For the foregoing reasons, Capsule Communications, Inc., Covista, Inc., and US LEC Corp. urge the Commission to deny Verizon's Application for Provision of In-Region InterLATA Services in Pennsylvania.

Respectfully submitted,

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Dated: July 11, 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

EXHIBIT A

June 13, 2001 Maryland Public Service Commission Letter Ruling

COMMISSIONERS

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GREGORY V. CARMEAN
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June 13, 2001

VIA FACSIMILE & U.S. MAIL

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David A. Hill, Esquire
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Verizon Maryland Inc.
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Dear Messrs. Hazzard and Hill:

On May 31, 2001, Core Communications, Inc. ("Core") filed a Petition for Expedited Declaratory Ruling ("Petition") with the Public Service Commission ("Commission"). Core requests that the Commission prevent Verizon Maryland Inc. ("Verizon") from "unilaterally" implementing the Federal Communications Commission's ("FCC") recent order governing reciprocal compensation payments.[1] According to Core,. the FCC's new intercarrier compensation regime may only be implemented through the interconnection agreement amendment process. Core requests that the Commission declare:

1. Verizon must negotiate amendments to existing interconnection agreements through the change of law provision in order to avail itself of the *FCC Intercarrier Compensation Order*;

2. Any such amendment must be approved by the Commission in accordance with the Commission's standard procedures for reviewing and approving amendments to existing interconnection agreements; and

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Remand, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Report and Order (rel. Apr. 27, 2001) ("*FCC Order*").

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3. Any effort by Verizon to withhold reciprocal compensation payments for ISP-bound traffic prior to Commission approval of an interconnection agreement amendment constitutes a *per se* violation of the interconnection agreement and the Commission's orders.

Core's request was precipitated by receipt of a letter from Verizon stating the Verizon would refuse to pay invoiced amounts which exceed Verizon's interpretation of the FCC's Order. Core contends that the FCC Order is not self-executing. As noted earlier, Core petitions the Commission to declare that any action by Verizon to withhold reciprocal compensation payments for internet service provider bound traffic constitutes a *per se* violation of interconnection agreements and the Commission's reciprocal compensation orders.[2]

Verizon responded to Core's Petition on June 11, 2001. Verizon contends that this Commission has already ruled that Core is no longer entitled to receive reciprocal compensation for Internet traffic. Verizon further contends that Core misconstrues the change of law provisions contained in the interconnection agreement. Verizon also states that in this instance, no amendment is necessary. Finally, Verizon claims that the FCC has preempted the State Commissions on the issue of the compensation mechanism and rates for Internet traffic. Thus, according to Verizon, the Commission lacks the legal authority either to revise its previous reciprocal compensation decision or to approve or deny amendments concerning Internet traffic.

The Commission has carefully reviewed both the Petition and the response. The Commission finds that Verizon's position ignores the clear directive of the FCC that its intercarrier compensation mechanism only applies prospectively. In this regard, the FCC specifically stated:

> The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here.[3]

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[2] The Commission also received a joint letter supporting Core's Petition from the Association for Local Telecommunications Services, Competitive Telecommunications Associations, e.spire Communications, Inc. and Net2000 Communications Services, Inc.
[3] *Id.* at para. 82.

Thus, contrary to Verizon's contention, the FCC Order is not "self-executing." As directed by the FCC, Verizon may implement the interim compensation regime only through the contractual change-of-law provisions. The Commission's previous order establishing reciprocal compensation cannot override this clear directive from the FCC.

Based upon the foregoing analysis, the Commission hereby grants Core's Petition. Verizon is directed to negotiate amendments to existing interconnection agreements. Furthermore, Verizon is prohibited from withholding reciprocal compensation payments until the amendments to the agreements are approved by the Commission. As required in the change of law provisions, if the Companies cannot negotiate an amendment to the interconnection agreement, the Parties shall resolve their dispute under the applicable procedures set forth in the interconnection agreement.

By Direction of the Commission,

Felecia L. Greer
Executive Secretary

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on July 11, 2001, I caused to be served upon the following individuals the Comments of Capsule Communications, Inc., Covista, Inc., and US LEC Corp. in CC Docket 01-138:

Harisha Bastiampillai

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